

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 1/28/2020

-----X  
MARCOS CALCANO *on behalf of himself and:*  
*all other persons similarly situated,*

Plaintiff,

-against-

APRIL HUGHES, INC.,

Defendant.  
-----X

19-CV-9716 (VSB)

**ORDER**

VERNON S. BRODERICK, United States District Judge:

On October 24, 2019, Plaintiff filed this action against Defendant. (Doc. 1) Plaintiff obtained a summons on October 28, 2019. (Doc. 4.) To date, Plaintiff has not filed an affidavit of service or taken any other action to prosecute this case. Accordingly, it is hereby:

ORDERED that, no later than February 4, 2020, Plaintiff shall submit a letter of no more than three (3) pages, supported by legal authority, demonstrating good cause as to why this case should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). “Good cause is generally found only in exceptional circumstances where the plaintiff’s failure to serve process in a timely manner was the result of circumstances beyond its control.” *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999) (internal quotation marks omitted). “District courts consider the diligence of plaintiff’s efforts to effect proper service and any prejudice suffered by the defendant as a consequence of the delay.” *Id.* (internal quotation marks omitted). “An attorney’s inadvertence, neglect, mistake or misplaced reliance does not constitute good cause.” *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F.Supp. 654, 658 (S.D.N.Y.1997) (citing *McGregor v. United States*, 933 F.2d 156, 160 (2d Cir.1991), *aff’d*, 173 F.3d 844 (2d Cir.1999)). Plaintiffs is warned that failure to submit a letter and to demonstrate

good cause for failure to serve Defendant within ninety days after the complaint was filed will result in dismissal of this action.

SO ORDERED.

Dated: January 28, 2020  
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style. The first letter "V" is large and prominent. The signature is written over a horizontal line.

Vernon S. Broderick  
United States District Judge